

No. 14/13/87-6Lab./87.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s Haryana Woven Sare Pvt. Ltd., *versus* Ovender Kumar.

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 24 of 1994

between

OVENDER KUMAR SINGH, C/O SHRI JAI SINGH, DISTT. SECRETARY,
BHARTIYA MAZDOOR SANGH OFFICE, MUNIM MARKET, GURGAON

and

THE MANAGEMENT OF M/S HARYANA WOVEN SARE PVT. LTD., PLOT NO. 22,
ROZKA-MEO, SOHNA, GURGAON

Present :

None.

AWARD

In exercise of the powers conferred by clause (c) of sub section (i) of section 10 of the Industrial Dispute Act, 1947 the Governor of Haryana referred the service matter between the parties, mentioned above, to this Court, for adjudication,—*vide* Haryana Government Labour Department Endorsement No. 7861—65, dated the 3rd March, 1994.

2. Case been called several times. None appears for the workman. Therefore reference is dismissed in default for non-prosecution.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court.
Gurgaon.

Endorsement No. 1865, dated 29th December, 1994.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, under section 15 of the Industrial Disputes Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-Cum-Labour Court,
Gurgaon.

No. 14/13/87-6Lab./88.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s Indian Drugs and Pharmaceuticals LTD *versus* Sarup Lal

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 132 of 1989

SARUP LAL S/O SHRI BANWARI LAL C/O SHRI P.S. RAO, LABOUR LAW ADVISER, SHANTI
NAGRA, NEAR NATIONAL HIGH WAY NO. 8, GURGAON AND THE MANAGEMENT OF
M/S INDIAN DRUGS AND PHARMECEUTICALS LTD, DUNDAHARA INDUSTRIAL COMPLEX
(UDYOG VIHAR), GURGAON

Present :

Shri P.S. Rao, for the workman.

Shri M.P. Gupta. for the management.

AWARD

In exercise of the powers conferred by clause (c) of Sub Section (i) of Section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana referred the following dispute, between the parties, mentioned above, to this Court, for adjudication,—vide Haryana Government Labour Deptl. Endorstment No. 10624—29 dated 9th March, 1989 :—

Whether services of Shri Sarup Lal have been terminated or he has left his job on his own by remaining absent from duty ? To what relief is he entitled on th decision of this issue ?

2. The facts as given in the claim statement are that the workman was working as a Sweeper with the management from 8th August, 1980 and was drawing a salary of Rs.900/- p. m. ad his services were unlawfully terminated on 6th November, 1987. The petitioner has sought his reinstatement with full back wages and continuity of service.

3. In the written statement, it was pleaded that the workman was absent from duty for more than ten days and did not join his duty despite letters, telegram and his services were terminated as per contract of service after giving due opportunity and he was a habitually absentee. It was pleaded that Sarup Ram was absent from duty from 7th November, 1987 without any leave. A telegram was sent along with the confirmation letter on 11th November, 1987 calling upon him to join the duty, but the workman did not report for duty till 10th November, 1987 and the workmn lost his lien. It was pleaded that the past conduct of the workman was not satisfactory and he had availed more than 240 days of leave without pay in more than 125 spells from June 1982 till November 1987.

4. In the rejoinder, contents of the written statement were controverted and it was pleaded that the department was bound to order departmental enquiry in case of absence.

5. On these pleadings, following issue was framed on 2nd Ferbruary, 1990 :—

Whether services of Shri Sarup Lal have been terminated or he had left his job on his own by remaining absent from duty ? To what relief is he entitled on the decision of this issue ?

6. I have heard the authorised representatives of the parties and have gone through the evidence on record. My finding on the issue is as under :—

7. The management has examined Ram Singh, who brought the attendance register pertaining to November, 1987 and proved copy Ex. M1. R. P. Sikri MW2 proved the telegram Ex. M2, which was sent to the workman. The confirmation letter Ex. M4 was also proved. He deposed that entry regarding the same has been made in the despatch register, which had been maintained by the management. He also proved order Ex. M5, copy of the telegram Ex. M6, postal receipt Ex. M7, Letters Ex. M9 to Ex. M24 which had been sent to the workman by the management from time to time. He deposed that the services of the workman had been terminated as he was a habitual absentee and the workman was absent from 7th November, 1987 to 20th November, 1987 without any information and Certified Standing Orders of the management were applicable in this case. Som Nath Aggrawal MW3, Hand writing Expert had examined the disputed signatures Mark Q-1 on the letter dated 2nd Ferbruary, 1984 and had compared the same with the specimen signatures which were taken in the Court and came to the conclusion that the disputed signatures were that of Sarup Lal.

8. Sarup Lal, workman appeared in the witness box as WW1 and deposed that his services had been illegally terminated without assigning any reason and they did not give any notice or pay and either any charge-sheet was served, nor any enquiry was conducted. In his cross examination, he denied that he had received any telegram from the mangement. He gave his address and admitted that letter Ex. M17, Ex. M19 and Ex. M-31 bore his signatures.

9. Copy of attendance register has been placed on the file, which shows that the workman was absent from duty from 7th November, 1987 and did not join thereafter and in terms of the Standing Orders, his services were terminated. A copy of the Standing Orders has been placed on the file, according to which, if a workman remained absent for ten days continuously without prior permission, it would be treated that the workman had voluntarily abandoned the service. The management in this case had sent telegram Ex. M2 at the address supplied by the workman. The postal receipt Ex. M3 had also been placed on the file. The management has also placed letters, notice, warning letters on the file to show that the workman was a habitually absentee and in 1984 the workman had admitted that he had remained absent without leave but had assured the management that he would not commit the mistake and he was allowed to resume duty. The management had on 21st November, 1987 sent a telegram to the workman that he had lost lien as per para 20 (10) of the Certified Standing Orders.

10. Admittedly, no enquiry was held in this case and as per the Certified Standing Orders, the management could terminate the services, but it has been held time and again by the Hon'ble Court that it would

be imperative on the part of the employer to hold an enquiry in order to dispense with the services of a workman, who wilfully absents himself or over stays his sanctioned leave. Reference in this regard may be made to *Jai Shanker versus State of Rajasthan*, AIR 1966 S. C. page 592, *D. K. Yadav versus J.M. A. Industries Ltd*, 1993 LLR page 584. It has been held that "striking off the name from the rolls for unauthorised absence from duty amounted to termination of service and absence from duty for 8 consecutive days amounts to misconduct and termination of service on such grounds without complying with minimum principles of natural justice would not be justified. It is settled law that Certified Standing Orders have statutory force which do not expressly exclude the application of the principles of natural justice. It is a cardinal point that has to be borne in mind, in every case, is, whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily effecting the rights of the concerned person. An order involving civil consequences must be made consistently with the rules of natural justice. Principle of natural justice must be read into Standing Order No. 13 (2) (iv). Otherwise it would become arbitrary, unjust and unfair violating Art. 14. When so read the impugned action is violative of the principles of natural justice." The management in this case has produced material on the file to show that the workman was a habitual absentee, in that case, it was incumbent for the management to serve a charge-sheet and held a regular enquiry. No such enquiry was conducted and therefore, termination is against the principles of natural justice and it cannot be said to be a case of abandonment of service, as such, the workman is entitled to reinstatement with full back wages and continuity of service. Reference is answered accordingly with no order as to costs.

The 5th December, 1994

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 1854, dated the 29th December, 1994.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments Chandigarh under Section 15 of the Industrial Disputes Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

No. 14/13/87-6Lab./89.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s Arjun Auto Pvt. LTD. versus Hari Nandan Rai

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 476 of 1992

Between

HARI NANDAN RAI S/O SHRI RAM CHARAN RAI C/O NARENDR PANDIT, DUNDAHERA
DISTT. GURGAON .. Workman

And

THE M/S ARJUN AUTO PVT. LTD, PLOT NO. 81, UDYOG VIHAR, DUNDAHERA, GURGAON
.. Management

Present :

Shri Shardha Nand, for the workman.

Shri Jagbir Bhadana A. R., for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub section (i) of Section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana referred the following dispute, between

the parties, mentioned above, to this Court for adjudication,—vide Haryana Government Labour Deptt. Endorsement No. 46017—22 dated 28th September, 1992 :—

Whether termination of services of Sh. Hari Nandan Rai is legal and just ? If not, to what relief is he entitled ?

2. According to the claim statement, the workman was working as helper with the management from 12th March, 1988 till 3rd June, 1992 and he was drawing a salary of Rs. 975/- P. M. and his services were illegally terminated. The workman has sought his reinstatement with full back wages.

3. The management took up the plea that the workman had been dismissed from service on account of gross misconduct and after holding a full fledged domestic enquiry. It was pleaded that a charge-sheet was issued and thereafter the workman was suspended and a domestic enquiry was conducted and the workman had participated in it and had defended himself. The workman was found guilty of misconduct and the punishment of dismissal was proposed and a show cause notice was issued, to which, reply was given, which was considered, but was not found satisfactory and dismissal order was passed. The workman acknowledged the dismissal letter but he failed to collect his dues, which was sent to him by bank draft, but was received back undelivered and the dues were later collected by him before the Labour Inspector.

4. In the rejoinder, the comments of the written statement were controverted, while those of the claim statement were reiterated.

5. On the pleadings of the parties, following issues were framed on 8th April, 1993 :—

1. Whether fair and proper enquiry was conducted in the matter ?
2. Whether termination of services of Sh. Hari Nandan Rai is legal and just ? If not, to what relief is he entitled ?
3. Relief.

6. I have heard the authorised representatives of the parties and have gone through the evidence on the file. My findings on the issues are as under :—

Issue No. 1

7. Sudhir Kumar Chauhan, who was appointed as Enquiry Officer was examined as MW1. He proved his appointment letter and the proceedings Ex. M2 and deposed that the workman had participated in the enquiry and he had given opportunity to the workman to cross-examine the witnesses of the management and opportunity was also given to the workman to produce his witnesses and had given his report.

8. K.K. Sharma, MW2, proved the appointment letter Ex. M5 and deposed that the workman had misbehaved, therefore, charge-sheet Ex. M3 had been served upon him and the workman had also submitted his reply and after completion of domestic enquiry, show cause notice has been issued, reply of the workman was sought and dismissal order was passed. He stated that the management had offered balance due on account of wages, and leave encashment, but the same were not accepted and on refusal, the same was sent through bank draft and later the amount was paid before the Labour Inspector.

9. On the other hand, the workman had stepped into the witness box as WW1 and deposed that he had worked continuously from 12th March, 1988 to 13th June, 1992 and charge-sheet had been served upon him but he did not know about its contents. He, however, admitted that he had given his reply Ex. M6. He stated that full opportunity to cross examine the witnesses had not been given, nor opportunity to produce his witnesses was granted to him and he was illiterate. He also deposed that he was not aware of the procedure and it had not been explained to him. He also admitted in the cross-examination that he owned three acres of land and was earning about Rs. 25000-00/30000-00 per year.

10. A perusal of the enquiry file shows that notice of enquiry had been given to the workman, copy of the day-to-day proceedings had also been supplied to him, the workman had also participated in the enquiry and had cross examined the witnesses produced by the management and he had also produced his witnesses. In the present case, except for the demand notice, which was treated as claim statement, no allegation had been made and it was only at the time of evidence that the workman had pointed out that he had not been given opportunity to examine his witnesses or cross examine the witnesses of the management. The Industrial Disputes Act does not prescribe any procedure to be followed by the employer in domestic enquiry. But there are certain guiding principles and the enquiry should be conducted keeping into view the rules of natural justice i.e., without bias and giving the workman opportunity of adequately representing his case. It has been held in *Veeman versus Paramakudi Cooperative Urban Bank Ltd.*, 1989 Vol. II LLN page 1034, that workman has no inherent right to be represented by legal practitioner unless employer is so represented or rules so provides and principles of natural justice had not been breached on ground of denial of reasonable opportunity to defend by refusal to be represented by a legal practitioner.

11. In the present case, the workman has sought to put forward his case before this Court that he was illiterate and the management was represented by an educated person and the Enquiry Officer had denied him the opportunity to be represented by a legal practitioner. This position is not depicted from the proceedings before the Enquiry Officer. No objection of any kind was raised before the Enquiry Officer and the workman represented his own case. Each page of the proceeding is signed by the workman and copies of the same had also been supplied to him and it can safely be held that the guiding principles of holding the enquiry have been followed. Full opportunity had been given to the workman to represent his case, to cross examine the witnesses produced by the management, and to produce his defence witnesses. It is thus found that fair and proper enquiry was conducted in this matter. This issue is decided in favour of the management.

Issues No. 2 and 3

12. The question which has been raised here is that the punishment does not commensurate with the charges which are not that grave i.e. punishment is disproportionate to the offence said to have been committed proposition laid down in *Ved Parkash Gupta versus Delton Cables*, 1984 SCC (Lab) page 281, is age old. It reiterates that if the punishment is shockingly disproportionate to the charges framed, which no responsible employer would ever impose, in like circumstances, such a punishment would be deemed to be an unfair labour practice on the part of the management justifying interference.

13. In the present case, the allegations against the workman were that he had misbehaved and had threatened the security guard and had stopped the supplier from entering the premises and had instigated the co-workers and had participated in an unjustified strike. It was alleged that he had also disobeyed the orders of his immediate superiors. All these charges were proved against the workman and the Enquiry Officer had held that it would also amount to misconduct and I feel that the punishment of dismissal was the only course open to the management so as to prevent encouragement of any indiscipline. Resultantly, it is found that the workman is not entitled to any relief. Reference is answered accordingly with no order as to costs.

ANITA CHAUDHARY,

The 16th December, 1994

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 1862, The 29th December, 1994

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh under Section 15 of the I.D. Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

No. 14/13/87-6Lab./90.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of Chief Administrator, Haryana Urban Development Authority, Manimajra, U.T., Chandigarh *versus* Sube Singh Sahani

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 322 of 89

Between

SHRI SUBE SINGH SAHANI S/O SHRI RAM SINGH C/O SHRI SHARDHA NAND, GENERAL SECRETARY, AITUC OFFICE 214/4 MARLA, GURGAON .. Workman

And

(1) THE CHIEF ADMINISTRATOR, HARYANA URBAN DEVELOPMENT AUTHORITY, MANIMAJRA, U.T., CHANDIGARH.

(2) ADMINISTRATIVE OFFICER, HARYANA URBAN DEVELOPMENT AUTHORITY, RAILWAY ROAD, REWARI (MOHINDERGARH) .. Management

Present :

Shri S. K. Goswami, for the workman.

Shri R. S. Sathi ADA, for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of Sub-Section (i) of Section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana referred the following dispute, between the parties, mentioned above, to this Court, for adjudication,—vide Haryana Government Labour Department. Endorsement No. 39235—41, dated 12th September, 1989 :—

Whether termination of services of Shri Sube Singh Sahani Mali-cum-Chowkidar is legal and just? If not, to what relief is he entitled?

2. According to the claim statement, the workman was appointed as Mali-cum-Chowkidar on 1st November, 1986 and his services were terminated on 1st June, 1989. At that time, the workman was drawing a salary of Rs. 625/- p.m. It had been pleaded that no compensation had been paid and the workman was entitled to reinstatement with full back wages.

3. The management in its written statement took up the plea that the management did not fall within the definition of "industry" and the petitioner was barred by time. It was pleaded that the workman was appointed as Mali-cum-Chowkidar on daily wages and he had worked from 8th November, 1986 to 1st December, 1987 with frequent gaps. It was pleaded that the workman had himself absented and he was not entitled to any compensation.

4. On the pleadings of the parties, the following issues were framed on 11th June, 1991 by my learned predecessor :—

- (1) Whether the respondent is not an "industry" as defined in Section 2 (j) of the I. D. Act, 1947 ? OPM.
- (2) Whether the applicant is not covered under the definition of the workman under Section 2 (s) of the I. D. Act., 1947 ?
- (3) Whether termination of services of Shri Sube Singh Sahani, Mali-cum-Chowkidar is legal and just? If not, to what relief is he entitled?

5. I have heard the authorised representatives of the parties and have gone through the evidence placed on the file. My findings on the issues are as under :—

Issue No. 1:

6. The important test for deciding whether any business, trade or calling of an employer constitutes an industry is not only the character of the activities indicated by the word included in the definition, but there from the organisation in relation to the employer, labour force as an active and creative agent for the fruits of activities. It is immaterial whether the management makes profit and it is not a necessary ingredient. The test and guideline for inclusion of the organisation that there should be a systematic activities organised by co-operation between the employer and employee for the production and distribution of goods and calculated to satisfy human wants and wishes. The management in the present case is not simply carrying out sovereign function and simply because establishment is run by the Government, it cannot escape from the features laid down by the Act. There are certain functions which are severable and possess an equity of its own and it would be plausible to hold that the employees of the management are workman and the undertaking is an "industry". The management has been unable to refer any authority to show that the management is not an "industry". This issue is decided against the management.

Issue No. 2 :

7. This issue was not pressed before me, therefore, it shall be taken as not pressed.

Issue No. 3:

8. The management has examined Bhim Singh, JE, MWI, who brought the muster roll and proved the copies mark A to mark M. He stated that the workman was paid wages for the period, he had worked. When the witness was recalled for cross examination, he proved copies of the muster roll Ex. M-1 to Ex. M-13 and admitted that the workman had worked from November, 1986 to December, 1987. He also proved Ex. M-14, according to which, he had worked for 286 days.

9. On the other hand, the workman had stepped into the witness box as WW-1 and deposed that he had put in continuous service from 8th November, 1986 to 31st December, 1987 and his services were terminated and no compensation was paid.

10. On the perusal of the claim statement, the workman had initially come up with the plea that he had worked from 1st November, 1986 to 1st June, 1989, but when he had stepped into the witness box,

he had stated that he had worked from 8th November, 1986 to 31st December, 1987. The management on the other hand, has produced statement Ex. M-14, which shows the number of working days. The workman did not work for a single day in February, 1987 and if the total days from March, 1987 to December, 1987 are counted, the period comes to about 286 days. The management had taken up the place that there were various breaks and gaps, but the statement Ex. M14 does not depict it. Since the workman had put in 240 days of continuous service, he was entitled to notice and retrenchment compensation, but neither any notice or retrenchment compensation was paid. The management has failed to place any material on the file to show that there was no contract on each appointment or that the contract was renewed from time to time. They have failed to make out any case, which may fall under Section 2 (oo) (bb) of the Act. The management in this case has contravened the provisions of Section 25F of the Act and it amounts to termination.

11. It has been argued that the workman has not been able to show that he had worked till June, 1989 and he has admitted that he had worked till 31st December, 1987 and the demand notice had been given after about 1½ year, therefore, he is not entitled to back wages for that period. Admittedly, the workman had not worked after 31st December, 1987 and the demand notice had only been made in June, 1989. Prior there to he had not even approached the management or the Labour Officer and was sitting over the matter. Thus, it is held that the workman is entitled to reinstatement but he shall only be entitled to full back wages from the date of demand notice i.e. 22nd June, 1989. Reference is answered accordingly with no order as to costs.

The 14th December, 1994.

NAITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 1861, the 29th December, 1994.

Forwarded (four copies), to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh under Section 15 of the I. D. Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

No. 14/13/87-6Lab./91.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s Engineer-in-chief Irrigation Department Haryana, Sector-17, Chandigarh, —versus Dilla Ram.

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON.

Reference No. 652 of 1988

Between

DILLA RAM, SON OF SHRI BHAKTI RAM C/O SHRI MOHAN LAL, MICRO PRECISION PRODUCT, 4, LINK ROAD (BHATTA NO. 10) FARIDABAD AND THE MANAGEMENT OF M/S. ENGINEER-IN-CHIEF, IRRIGATION DEPARTMENT, HARYANA SECTOR-17, CHANDIGARH (2) EXECUTIVE ENGINEER, IRRIGATION DEPARTMENT, GURGAON DIVISION, UJINA REMODELING SUB DIVISION NO. 4, N. V. H. F. V. R. D. NO. 1, GURGAON, (3) S. D. O., BUND AND INVESTIGATION SUB DIVISION, REWARI, DISTRICT MOHINDERGARH.

Present :

Shri M. S. Nagar, Authorised Representative for the workman.

None, for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of Sub-Section (i) of Section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana referred the following dispute, between the parties mentioned above, to this Court, for adjudication, —vide Haryana Government, Labour Department endorsement No. 56655—62, dated the 16th December, 1988:—

Whether termination of services of Shri Dilla Ram, Beldar, is just and legal? If not, to what relief is he entitled?

2. According to the claim statement, Dilla Ram workman was working as a Beldar in the Irrigation Department, Rewari, Sub-Division, Gurgaon in the year, 1982. According to the pleadings, he was posted at Sohna till 1983, then he was transferred to Sub Division No. 4 and had worked there till 1984. He was again transferred to Irrigation Sub Division No. 3, Gurgaon and lastly he was working in Sub Division, Rewari till 30th September, 1987. According to the pleadings his services were terminated on 30th September, 1987 and no notice or chargesheet had been served upon him and he had sought his reinstatement with full back wages.

3. The management moved an application directing the workman to supply better particulars as according to him, he had been transferred from time to time and had worked at Rewari, Sohna, Nuh and Gurgaon, but no appointment letter or transfer order had been placed on the record therefore, it was not possible for them to trace out the record. After calling for the record, written statement was filed and it was pleaded that according to the record available with the Sub Division, Rewari workman was engaged on 1st June, 1987 and he had worked till 31st December, 1987 and he had not completed 240 days. It was denied that he was appointed in 1982 at Rewari or that he was posted at Sohna. It was pleaded that Sohna was in district Gurgaon and had separate Sub-Division and was under the control of Faridabad Division and it was the workman, who had voluntarily abandoned the service from 10th January, 1988.

4. In the rejoinder, the contents of the written statement were controverted, while those of the claim statement were reiterated.

5. On the pleadings of the parties, following issue was framed on 18th August, 1989:—

Whether termination of services of Shri Dilla Ram, Beldar is just and legal? If not, to what relief is he entitled?

6. I have heard the authorised representative of the workman, as none had appeared on behalf of the management at the time of arguments. My finding on the issue framed is as under:—

7. The management had examined Raj Kumar, working in Sub-Division No 2, Rewari, who brought the record and deposed that the workman had been engaged as casual workman and had worked from 1st June, 1987 to 31st December 1987. He brought attendance register and payment vouchers, cash book and proved the copies Ex. M 1 and Ex. M 2. He stated that workman did not report for duty from 1st January, 1988 and notices had been sent to him. He proved the notices Ex. M 3 and Ex. M 4. According to him the workman had not completed 240 days of services.

8. On the other hand, workman had examined Shanker Lal, who was working as SDC in Sub Division No. 2, Rewari who also brought the attendance register from 1982 to 1987 and deposed that the workman had worked in their Sub-Division only from 1st June 1987 to 31st December 1987. Sia Ram, SDC, Faridabad WW 2 brought the record and deposed that the workman had worked from February 1983 to December 1983 and had not worked in April, and July, 1983 at all. Sat Pal Singh, J. E., WW 3 deposed that he had not brought the summoned record as the same was with the Xen, Rewari. Krishan Lal, SDC, WW 4, from the Nuh Sub-Division proved the detail of salary paid to the workman from June, 1984 to September, 1986.

9. The workman has stepped into the witness box as WW 1. He stated that he had worked in the department from 1982 onwards and was transferred from time to time. According to him, he had worked till 30th September, 1987. It may be pointed out here that the workman had pleaded in the claim statement that he had worked till 30th September, 1987, but the management had pleaded that he had worked in the Rewari Sub-Division from 1st June, 1987 to 31st December, 1987.

10. From the evidence, which had been made available on the filed couple with the pleadings, it is clear that the workman had worked in the Rewari Sub-Division from 1st June, 1987 to 31st December, 1987. No appointment letter had been issued to him. The workman had also worked in Sohra Sub-Division from February, 1983 to December, 1983 except for two months in between and according to WW 4, he had worked in the Nuh Sub-Division from June 1984 to October, 1986. The detail of the wages paid to him for these months had been made available by the workman, but no evidence was produced to show the number of days he had put in during this period. The workman has come up with the plea that he was transferred from time to time in the separate Sub-Division an argument was also sought to be made on his behalf, that it would count for continuous service, but this plea has no force as no transfer order could be produced on the file to show that the casual worker had been transferred from one Sub-Division to the other. The workman worked in separate Sub-Divisions in different district and the entire period would not constitute a continuous working for 240 days under the same employer. It is not admitted that the workman worked for 240 days. There is no evidence on the file to show that workman had put in 240 days of continuous service in the preceding year and it is well settled that industrial workers who do not complete 240 days of service have no industrial right under the Act and cannot avail of the machinery provided under the Act. It is thus found the workman is not entitled to any relief. Reference is answered accordingly with no order as to costs.

The 12th December, 1994.

ANITA CHAUDHARY,

Presiding Officer,

Industrial Tribunal-cum-Labour
Court, Gurgaon.

Endorsement No. 1860, dated the 29th December, 1994.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh under Section 15 of the I. D. Act, 1947.

ANITA CHAUDHARY

Presiding Officer,

Industrial Tribunal-cum-Labour,
Court, Gurgaon.

No. 14/13/87-6 Lab./92.—In pursuance of the provisions of section 12 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon, respect of the dispute between the workman and the management of The General Manager (Technical), Haryana Roadways, Engineer Corporation, *versus* Shiv Narain.

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 342 of 1992

Between

SHIV NARAIN, C/O P.K. YADAV, ADVOCATE, GURGAON AND THE MANAGEMENT OF THE GENERAL MANAGER, (TECHNICAL) HARYANA ROADWAYS ENGINEER CORPORATION, BEHRAMPUR, DISTRICT GURGAON

Present:—

Shri P. R. Yadav, A.R. for the workman.

Shri Jagbir Singh, A.D.A. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of Sub-Section (i) of Section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana referred the following dispute, between the parties mentioned above, to this Court, for adjudication,—*vide* Haryana Government Labour Department, Endst. No. 29868—73, dated 1st July, 1992:—

Whether termination of services of Shri Shiv Narain is justified and legal? If not, to what relief is he entitled?

2. According to the claim statement, the workman was working as a helper from 3rd April, 1991 and his services were terminated on 2nd January, 1992. At that time, the workman was drawing a salary of Rs. 960/- p.m. No notice or compensation had been paid and the petitioner has sought his reinstatement with full back wages.

3. In the written statement, it was pleaded that the management was involved in production work and required labour to do allied jobs and the workman had been appointed purely on man-days basis and he had not completed 240 days of continuous service. It was pleaded that the petitioner was paid Rs. 32 per day at the rate fixed by the Deputy Commissioner, Gurgaon and the services were discontinued as no longer required and this fact was mentioned in the appointment letter.

4. On the pleadings of the parties, following issues were framed on 14th January, 1993:—

1. Whether termination of services of Shri Shiv Narain is just and legal? If not, to what relief is he entitled?
2. Relief.

5. I have heard authorised representatives of the parties and have gone through the evidence on record. My findings on the issues framed are as under:—

Issues No. 1 and 2:

6. The management has examined Ram Parkash, MW1, who deposed that the petitioner was appointed on casual labour on 3rd April, 1991 and sanction Ex. M1 was obtained. It was stated that the management had a contract of fabricating bus bodies for Rajasthan Roadways and the contract was time bound and it was necessary to appoint labour and the labour was appointed for ten days to 15 days and sanction for every appointment was taken afresh. He stated that the fabrication work was completed and no labour was appointed thereafter and the petitioner had not worked for 240 days. In the cross-examination, he also proved Ex. M2 which gives the details of working days. According to him, no retrenchment compensation had been paid.

7. The workman has stepped into the witness box as WW1 and deposed that he was working as a helper with effect from 3rd April, 1991 and his services were illegally terminated on 2nd January, 1992 and no notice of compensation had been paid to him.

8. The management had produced Ex. M1, which is a copy of the office order, where a note had been made, according to which sanction was taken for engaging casual labour at the rate fixed by the Deputy Commissioner for fabricating body and an order was passed thereafter that 20 casual labourers be engaged for a period of one month. No other material has been produced by the management. When it had been specifically stated by MW1 that the casual labour was engaged from time to time for a specific number of days and sanction was taken for every appointment. According to the management, the workman had put in 230 days from April, 1991 to 13th December, 1991. According to MW1 it did not include Sundays and gazetted holidays. The management was in possession of the entire record and it was for them to produce the muster roll to show that the workman had not worked for after 13th December, 1991. They did not even care to produce that record in the Court. An adverse inference has to be drawn against them specially when the workman had specifically pleaded that he had worked till 1st January, 1992. There is no cross-examination upon WW1 with respect to his working till 1st January, 1992 or about the breaks in between. The management has not brought any record on the file to show as to when the fabrication work had been completed. Thus the plea put forward by the workman has to be accepted. In that case since the workman had put in 240 days of continuous service and the management was under a duty to pay retrenchment compensation. Admittedly, no notice or retrenchment compensation was paid to the workman, which is in contravention of the provisions of Section 25F of the Act and it amounts to termination, as such, workman is entitled to reinstatement with full back wages. Reference is answered and returned accordingly with no order as to cost.

ANITA CHAUDHARY,

The 13th December, 1994.

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endst. No. 1859, dated 29th December, 1994.

Forwarded, (four copies) to the Secretary to Government Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of the I.D. Act 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.